App. F. IX-4.

193 .

File No. 130. 32

Previous References

Misc 29. 23-4-9.

(Law :)

Serial Nos. 1 & 2.

Later References

Mis 312 - 32 - 1-24

Mg 29 4 33 1 4.

Misc. 168-44-(1+2). B. January 1947.

(11)

General and Revenue Secretariat.

Serial Nos. Misc.

Part B for May 33

SUBJECT.

Re. recovery of possession & mesne profits of S.No. 75 of Sarakkeri village, belonging to Banasankari Temple, Bhore Taluk.

The Dwg. Comr.

Misc. P. 6/10 & 9 25-5-33

Forwarded a Copy of Mr. Govt. Advocate's opinion on the matter for necessary action & returns the enclosed file of records

Dy. Abdul Aziz
30-5-33

Serial No.

For,

The Hon'ble

No. Apl. ?? dated 4th March 1933 Sol[icitor] legal opinion in the matter of recov[ery] of rent in respect of S.no. 78 of Sarakki belonging to the Sri Rama Sankaralli Bangalore [illegible].

Facts of the case are noted in the P.[illegible] It appears that one Doddaramgappa of [illegible] Village endowed his land bearing S.no. 78 to the Bana Sankari Temple, through a registered gift deed with a recital that the annual income from the land should be utilised for a day's Seva during the 'Rathyotsava' every year. The Donor's widow who is in actual possession of the land resists the delivery of possession on the ground that the document is not genuine for the reason that her husband was mentally infirm. It is pointed out that the endowment was not accepted by the Govt.

Under the circumstances pointed out Govt have to establish their rights over the properly endowed to the temple, before taking Court steps to evict the widow. This can be done by instituting a civil Suit by the Hon'ble Commr or the Sole Dharmadarshi of the temple on behalf of the Hon'ble Govt. Formal acceptance of the endowment before filing Suit as suggested by the Hon'ble Commr is unnecessary.

Subject to orders.

NOTE—Contn. Sheet.

2

File No. of 193 . | General and Revenue Secretariat

Since the land endowed by Doddaveerappa to the temple in 1920 is still in the possession of the donor's wife and the contents the gift made by her husband, it is legally not possible to get possession except through a court of law. Neither the Land Rev Code nor the Religious & charitable Endowments Regulation ~~Code~~ empowers Govt in such cases to get possession through summary process.

As regards the advisability of filing a civil suit now, it is apparent that it will be hotly contested on two grounds, viz i) the validity of the gift and ii) adverse possession for over 12 years. The burden of proving that the gift deed is not genuine is of course on the defendant and since the deed is duly registered, she may find it hard to prove that the donor was mentally infirm at the time of its execution. The ~~question~~ fact of adverse possession however seems rather easy to prove in this case as the report shows that ~~neither~~ the temple did not get into possession of the lands ever since its gift in Dec^{r} 1920. The Dharmadarsi however contends that the donor Doddaveerappa till his death in 1925 was himself cultivating the lands as a tenant for the temple. It is however doubtful how far there is evidence to establish such an allegation.

5 3 . 1

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

GENERAL SECRETARY'S
1 APR.
No

If the Dharmadarsi thinks that he can maintain his contention in a Court of law, there is no harm in his being allowed to institute a suit on his own responsibility. The Hon Com' enquires if such a suit can be filed without Govt formally accepting the endowment. This is unnecessary now, since the contention of the Dharmadarsi is that gift was accepted in 1920 alone and possession was also handed over then in pursuance of the gift.

If approved the Hon Com' will be informed accordingly —

(Gen Secy)

MP
16/4/33

In this case I am not in favour of any Court suit being filed against the widow under the sanction either express or implied of Govt. The Govt Advocate may also be consulted however

MP
20/4

Forwarded with compliments to the Govt Advocate for opinion —

MPrabhu
19.4.33

No. 0 5 7—32

dy 25-4-33

GOVT. ADVOCATE'S OFFICE
24 APR 1933
BANGALORE.

NOTE.—Comp. Sheets

Govt 9 4 32—33
dy 28 4.33

WD 0246 —GPB—15,000—22-8-32

File No. of 193 . | General and Revenue Secretariat

U.O.No.160/33-1
18.5.33

Returned with compliments.

The land in question was given over to the Temple by means of a Registered Deed dated 10-12-1920. The gentleman who was then managing the affairs of the temple says that possession was given over to the temple and the Sheikdar reports in his letter dated 25-4-1927 that Somanna Setty the gentleman above referred to seems to have paid the kandayam for 6 or 7 years i.e., from about the date of the Gift Deed. The Donor seems to have lived for some years after the gift and it is hardly likely that he was not in his senses or that he was by fraud induced to execute the deed. The Donor's widow's present claim may not be true.

Whether possession had been given over to the temple or not is a question of fact. If the recitals in the deed are true and the temple enjoyed the land there would be no question of adverse possession.

If the gift was prior to the taking over of the management of the temple by Government, the question of acceptance of the endowment on the part of Government does not seem to arise as all the properties which then belonged to the temple must be deemed to have been taken over by Government and vested in the sole Dharmadarsi appointed by Government. As however the Donor's widow is disputing the validity of the gift itself and is pleading adverse possession and as the Dharmadarsi alleges that he was in possession of the property on behalf of the temple it would be desirable to leave it to him to establish the claim in a Civil Court if he so chooses.

M. Rajeswara Rao
Government Advocate.
18.5.1933

GENERAL SECTT.
18 MAY 1933
No. Law

CSN.

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

Draft reply to the Hon'ble Member

DMP 19/5

Dft for issue TSD 19/5

For perusal before issue

(Genl Secy)

DMP 19/5

I Member

LTh 22/5

DMP 22/5

Ag 23/5

LTh 23/5

Issue

DMP 23/5

To,

The Hon'ble Member

No. 8 dated 25.5.33 forwarding a copy of the Govt. of India's opinion for necessary action

B 26/5/33

GENERAL DEPARTMENT
18 MAY 1933
No.

THE OFFICE OF THE COUNCIL
FIRST MEMBER
22 MAY 1933
No. 9782

TYPING SECTION
23 MAY 1933
GENL. & REV. SECTT.

NOTE—Contn. Sheet.

land for a period of 5 years. The donors widow, Ramakka who ~~reminded~~ remained in actual possession of the land objected to its disposal on the ---- ground that the document was not genuine and that her husband was -- mentally inform when he executed the Gift Deed. The Amildar however over-ruled her objection and leased out the land by sale for a period of 5 years from 1927-28. Though the sale was confirmed by the Sub-Division Officer, the auction purchaser did not get possession of the land owing to the continued takarar of Ramakka. On the report of the Sub Division Officer that it would be illegal and high handed to take eviction proceedings under Sec.209 L.R.C., the Deputy Commissioner --- passed orders on 7th January 1932 to the effect that it was not competent for the Revenue and Muzrai authorities to interfere in the matter as the endowment was not accepted by Government. The sole-dharmadarsi has now appealed to this office praying that the Muzrai Department should take action to safe-guard the properties of the temple as the same is a --- Muzrai institution.

3. The lands in Jaraganahalli, Karisandra and Sarakki in the Bangalor Taluk offered by Mr. Somanna Setty for the upkeep of the temple were ---- accepted in Government Order No.6514-16/Muz.662-21-4 dated 19th May 1932. S.No.75 of Sarakki which forms the subject matter ~~for~~ of the present appeal was not one of the lands offered by Mr. Somanna Setty and accepted by -- Government. Having regard to the circumstance of the case, it seems to me that the only course left open to recover possession of the property is by filing a suit against the donor's widow. I request that legal -- opinion may be obtained and sent to this office whether it would not be necessary to formally accept the endowment before a suit is filed and -- whether the sole dharmadarsi may be instructed to file a suit on behalf of the institution to recover possession of the property and whether ---- there would be any impediment by way of limitation to file a suit.

I have the honour to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

Proceedings of the Government of His Highness
the Maharaja of Mysore.

R e a d:-

Government proceedings No.2590-93/Muz.419-18-2 dated the 24th February 1919 sanctioning a monthly grant of Rs.8/- from the funds of the Sri Kasiveswesvaraswami temple at Gosayighat, Seringapatam, for a period of ten years, for the upkeep of Sri Banasankari temple at Sarabandepalya in the Bangalore Taluk constructed by Mr. B. Basapoa Chetty of Bangalore.

2. Government Proceedings No.604-607/Muz.57-19-2 dated the 19th August 1919 accepting a deposit of Rs.5000/- offered by Mr. B. Somanna Chetty, son of Mr. B. Basappa Chetty, under the charitable endowment Rules for the benefit of the said institution.

3. Government Proceedings No.6514-6/Muz.362-21-4 dated the 19th May 1922 accepting the endowment of certain lands in Jaraganahalli and two other villages offered by Mr. B. Somanna Chetty for the benefit of the institution and directing thecontinuance of the management of the temple by Mr. Somanna Chetty as sole Dharmadarsi during his life time, the question of taking the temple under Government management being deferred.

4. Government Proceedings No.1022/Muz.29-23-5 dated the 24th January 1924 rejecting the appeal of Mr. Somanna Chetty against the order of the Muzrai Commissioner that the lessees could not be summarily evicted from certain lands belonging to the temple and that resort should be had to the Civil Court to evict them either by the appellant or by the persons who have bid for the lease of the lands in the sale held by the Amildar, and reserving the question of taking the temple under Government management for separate consideration and orders.

5. Petitions registered Nos.555 and 1073 dated 5th November 1923 and 1st March 1924 respectively from Mr. Somanna Chetty praying that the temple with its endowments may be taken under Government management under Section 3 of the Muzrai Regulation with a view to its being treated as a Muzrai Institution etc.,

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Order No.1327-8/Muz.29-23-7
Dated Bangalore, the 26th March 1923.

In his petitions read above, Mr. Somanna Chetty states that he reserves no interest of a residuary or beneficial nature either for himself or other members of his family in the lands or money endowed to the temple and undertakes either to defend or to prosecute cases as regards specific plots comprised under the Survey Numbers in question which are considered

consi'ered a fit subject matter for litigation so long as he remains the sole Dharmadarsi of the temple.

2. In these circumstances, Government are pleased to accord sanction under Section 3 of the Muzrai Regulation to the assumption by Government of the management of Banasankari temple at Sarabandepalya in the Bangalore Taluk with all its endowments.

3. The management of the temple with its endowments will be --- vested, on behalf of Government, in Mr. Somanna Chetty, as Dharmadarsi of the temple during his life-time.

(Sd.) T. Ramaiya,
For Secretary to Government,
Revenue Department.

"C o p y"

For Muzrai Commissioner.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P. 2108 Dated, Bangalore, 25th May 1933.

From Exn Tahsildar's Report & a copy

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Muzrai Commissioner in Mysore,
Bangalore.

Sir,

With reference to your letter No. Apl. 2/32-33, dated 6th April 1933, soliciting legal opinion in the matter of recovery of possession and mesne profits of S.No. 75 of Sarakki village belonging to Banasankari temple, Bangalore Taluk, I am directed to enclose herewith a copy of the Government Advocate's opinion in the matter and to request you to take necessary action accordingly.

The entire file of records received with your letter is herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,

TRM

For General Secretary to Government

TRM.2 ISD

Appendix F G—1]

SUBJECT .....

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Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193* .

Date of issue 25 5 33

Signed by .....

List of enclosures.....

Copied by .....

Examined by .....

Section Law

File No. 130-32

Serial No. 2

No. P 6108 'Encl. title deeds / L.C. & A.G.'s opinion

To

The Mng. Comm^r.

Sir,

With reference to your letter no. Apl. 2 / 32-33 dated 6th April 1933 soliciting legal opinion in the matter of recovery of possession & mesne profits of S. no. 75 of Sarakki village belonging to Banashankari Temple, B'lore Taluk, I am directed to enclose herewith a Copy of the Govt. AG's opinion in the matter and to request you to take necessary action accordingly.

The entire file of records received with your letter is herewith returned

19.5.33 I have the for further

ISD 19/5